

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JIMMY CUELLAR,

Plaintiff,

v.

THE GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA,

Defendant.

Case No. 1:23-cv-01075-CDB

**ORDER REQUIRING PLAINTIFF TO
FILE CONSENT/DECLINE FORM AND
EITHER OPPOSITION TO MOTION TO
DISMISS OR ATTORNEY NOTICE OF
APPEARANCE**

(Docs. 7, 8)

14-DAY DEADLINE

Plaintiff Jimmy Cuellar, proceeding pro se, commenced this action on June 7, 2023, with the filing of a complaint in the Superior Court of the State of California, County of Kern. (Doc. 1 p. 1). On July 19, 2023, Defendant The Guardian Life Insurance Company of America removed this case to the United States District Court for the Eastern District of California. (*Id.*)

On July 20, 2023, Defendant filed a motion to dismiss. (Doc. 5). Pursuant to Local Rule 230(c), Plaintiff's opposition to the motion or statement of non-opposition was due "no later than fourteen (14) days after the motion was filed." After more than 14 days passed, on August 7, 2023, the Court ordered Plaintiff to show cause in writing why this action should not be dismissed for his failure to prosecute and to comply with the Local Rules. (Doc. 7). In the alternative, within that same time, the Court advised Plaintiff he may comply with the show cause order by filing his opposition or statement of non-opposition to Defendant's motion to dismiss.

On August 11, 2023, in lieu of filing an opposition to Defendant's motion, Plaintiff filed a response to the show cause order in which he summarily argues that the Court should grant him additional time to "find counsel to represent him." (Doc. 8). Plaintiff's filing is not responsive to the show cause order and neither sets forth good cause nor demonstrate that his neglect in failing to follow the Local Rules of this Court with respect to responding to the motion to dismiss is excusable. Accordingly, the Court declines at this time to discharge the show cause order and Plaintiff remains at risk of incurring sanctions as addressed therein and below.

Separately, Plaintiff has failed to comply with the Court's "Initial Scheduling Order, Cases Assigned Under App. A, Sub. (M)," dated July 19, 2023 (Doc. 2-1), and served by Defendant on Plaintiff on July 20, 2023 (Doc. 4). Pursuant to that Order, Plaintiff was required within 14 days of the action's removal to this Court (*e.g.*, on or before August 2, 2023) to complete, sign and return the "CONSENT / DECLINE OF U.S. MAGISTRATE JUDGE JURISDICTION" form, which also was served by Defendant on Plaintiff.

Notwithstanding Plaintiff's recently reported desire to retain counsel, because Plaintiff commenced this action in state court pro se and continues to proceed pro se in this Court, he is obligated to familiarize himself with and follow both the Local Rules¹ and the orders of this Court.

Accordingly, for the forgoing reasons, IT IS HEREBY ORDERED that, **no later than August 29, 2023**, Plaintiff SHALL FILE (1) a completed consent/decline form, and (2) either (a) a response to Defendant's motion to dismiss, or (b) in the event Plaintiff retains counsel, a notice of appearance for counsel. **Failure to comply with this Order may result in a recommendation that this action be dismissed. L.R. 110.**

IT IS SO ORDERED.

Dated: August 15, 2023


UNITED STATES MAGISTRATE JUDGE

¹ See <https://www.caed.uscourts.gov/caednew/assets/File/EDCA%20Local%20Rules%20Effective%208-7-23.pdf> (last visited Aug. 15, 2023).